

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**REPLY COMMENTS
OF
SOUTHEAST TELEPHONE, INC.,**

October 19, 2004

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**SOUTHEAST TELEPHONE, INC.,
REPLY COMMENTS**

Pursuant to the Federal Communication Commission's (Commission) August 20, 2004 Public Notice (DA 04-2967, released September 13, 2004), SouthEast Telephone, Inc. ("SouthEast") submits these reply comments on the future structure of the Commission's unbundling rules. SouthEast urges the Commission to recognize that competition is still undeveloped in rural, low density markets. It is the position of SouthEast Telephone that rural CLECs are impaired on a nationwide basis without access to UNE-P switching. For the purpose for this proceeding, SouthEast proposes that the Commission adopt a **"Rural Carve-Out"** to allow rural CLECs continued access to UNE-P switching with a graduated transition period based on household/line density. The Commission has a sustainable impairment model in place, the **Rural Exemption** created in the *Access Charge Reform Order*¹. SouthEast also proposes a graduated line density transition plan designed to ensure the continued benefits of competition to the rural CLECs and most importantly the rural consumers. Accordingly, SouthEast urges the Commission to adopt a **"Rural Carve-Out"** with a graduated household/line density based

¹Access Charge Reform Order, **CC Docket No. 96-262**, FCC-01-146. Paragraph 76.

transition period to allow rural CLECs the additional time needed to migrate from UNE-P to their own facilities with minimum service disruptions.

I. UNE-P Access Is Essential to Undeveloped Rural Markets

According to most recent *Local Competition Report*², twenty-five percent (25%) of the nation's zip codes have no CLEC alternative to Incumbent provider. Another thirty-five percent (35%) of the zip codes have as few as one (1) CLEC provider as competitor to the Incumbents. When combined, that is fifty-five percent (55%) of the nations population living in zip codes that have as few as one (1) CLEC competing with the ILEC. What is truly disturbing from a rural perspective, is that by the Commission's own statistics, most of the CLEC competition is concentrated in "major population centers of the country"³, not the sparsely populated rural areas.

Despite the bleak numbers stated above, rural consumers are beginning to see the benefit of UNE-P competition. UNE-P continues to be one of today's most important avenues for local telephone competition, and represents much of the growth in CLEC line count since 1999. Due to the ubiquitous nature of UNE-P, small carriers have been successful in providing service anywhere within their state where they could reach an interconnection agreement with an ILEC. The advent of UNE-P has allowed small companies such as SouthEast Telephone, Inc., to carve

²Local Competition Report; June 18, 2004. Table 16. **Percentage of Zip Codes with Competitive Local Exchange Carriers as of December 31, 2003.**

³Id.,Pg. 3, Bullet 5.

out business opportunities and to begin to bring much needed competition to the under-served rural markets.

In order for this trend to continue, regulations mindful of the rural markets must be implemented on a nationwide basis. A “***One Size Fits All***” set of regulations will not work for the rural areas or for the rural consumers of America. The Commission must understand that unbundling rules tailored for the metropolitan areas will fail to address the concerns of the often overlooked rural consumers across the country. While it may be true, that competition is beginning to emerge within the major cities nationwide where the population density supports a business plan to invest, it is quite a different story in the outlying areas where the homes and business are not situated so close together. The Commission must recognize that the competition enjoyed by the “*major population centers*” in the rest of the country has not yet come to fruition in the rural markets and create a “***Rural Carve-Out***” to allow competition to emerge in the rural marketplace.

II. SouthEast’s “*Rural Carve-Out*” Proposal

The “***Rural Carve-Out***” being proposed by SouthEast is nothing new to the Commission. In fact, it was created by the Commission in the *Access Charge Reform Order*⁴ as the criteria within the “rural exemption” which if met, allowed CLECs to charge access rates above those of the competing ILEC. Justification for the carve-out can be found within the *Access Charge*

⁴Access Charge Reform Order, CC Docket No. 96-262.

*Reform Order*⁵ and is consistent with the argument being put forth by SouthEast:

First, we note that such a device is consistent with the Commission's obligations, under section 254(d)(3) of the Act and section 706 of the 1996 Act, **to encourage the deployment to rural areas of the infrastructure necessary to support advanced telecommunications services and of the services themselves. The record indicates that CLECs often are more likely to deploy in rural areas the new facilities capable of supporting advanced calling features and advanced telecommunications services than are non-rural ILECs, which are more likely first to deploy such facilities in their more concentrated, urban markets.**

⁵Id. Pg. 28. Paragraph 65.

The Commission implemented the rural exemption the *Access Charge Reform Order* in April, 2001. By its own admission, the exemption only applies to a “small number of carriers serving a tiny portion of the nations access lines”, and is administratively simple to apply.⁶

III. Graduated Transition Plan

If the Commission finds that CLECs are not impaired without access to UNE-P switching, SouthEast proposes a graduated transition plan for those CLECs eligible for the **“Rural Carve-Out”**. The transition plan would be for those rural CLECs that provide service in counties whose household density is one hundred and twenty-eight households per square mile or less. In order to understand how sparsely populated many of rural areas of the nation are, a household density of one hundred and twenty-eight (128) per square mile equals one (1) household for every five (5) acres.

- a. Counties with a Household Density of 128 or less, but greater than 64 would be considered impaired. Transition Period of twenty-four (24) months.
- b. Counties with a Household Density of 64 or less, but greater than 36 would be considered impaired. Transition Period of forty-two (42) months.
- c. Counties with a Household Density of 36 or less would be considered impaired. Transition Period of sixty (60) months.

A graduated plan is necessary for several reasons. First on the business side, the CLEC will have to transition to market based rates while at the same time, amass an adequate customer base necessary to finance deployment of their of own network. From the customer standpoint, the CLEC will have to diligently work to ensure that as the infrastructure is being deployed, it will work seamlessly with the interoffice systems to minimize customer disruption. SouthEast has attached an in-depth description of both the proposed **“Rural Carve-Out”** and graduated

⁶Id. Pg. 30. Paragraph 68, and Pg. 32. Paragraph 75.

line density transition plan at the end of the Reply Comments.

IV. Conclusion

Perhaps the most telling sign of the lack of competition within the rural markets comes from the Commission itself. The Local Telephone Competition Report released on June 18, 2004 boasts that “As of December 31, 2003, at least one CLEC was serving customers in 75% of the nations zip codes.” Statistics can be misinterpreted - the flip side to the coin is that 25% of the nations zip codes have no competition to the ILEC, and another 35% have as few as one (1) competitor to the ILEC. In fact, proof positive for rural market impairment can be found on the map that follows Table 16 in the Competition Report. The majority of the nation is shaded in the color indicating that they only have one to three (1 to 3) alternatives to the Incumbent.

Thus, SouthEast Telephone, Inc. respectfully requests that the Commission adopt a **“Rural Carve-Out”** and graduated household/line density based line density based transition plan to allow CLECs serving the sparsely populated rural areas of the country to migrate towards facility based operations with minimum service disruptions.

Respectfully submitted,

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Secretary of the Corporation

October 19, 2004

Rural Carve-Out

Must be a Rural CLEC as defined by 47 CFR Part 61 Subpart C

Section 61.26 (6) (I) (ii):

A CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either:

- d. Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or
- e. An Urbanized Area⁷, as defined by the Census Bureau.

The CLEC provides telephone exchange service, including exchange access, to fewer than 50,000 access lines.

The CLEC provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines.

Graduated Transition Plan

Can only provide service in Counties whose Household Density⁸ is 128 household per square mile or less.

- a. Counties with a Household Density of 128 or less⁹, but greater than 64 then this county would be considered impaired and would have a transition period of 24 months;
- b. Counties with a Household Density of 64 or less¹⁰, but greater than 36 then this county would be considered impaired and would have a transition period of 42 months;
- c. Counties with a Household Density of 36 or less¹¹ then this county would be considered impaired and would have a transition period of 60 months.

⁷ An urbanized area ("UA") is an area consisting of a central place(s) and adjacent territory with a general population density of at least 1,000 people per square mile of land area that together have a minimum residential population of at least 50,000 people. The Census Bureau uses published criteria to determine the qualification and boundaries of UAs.

⁸ Household Density is based on the total household in the county, as determined by the Census Bureau's most recent census, divided by the square miles of the county.

⁹ A household density of 128 per square mile equals to one household for every 5 acres.

¹⁰ A household density of 64 per square mile equals to one household for every 10 acres.

¹¹ A household density of 128 per square mile equals to one household for every 17.8 acres.